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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/014,919	12/11/2001	Andrew B. Baker	22224-05648	9981
758 7590 01/28/2009 FENWICK & WEST LLP SILICON VALLEY CENTER 801 CALIFORNIA STREET MOUNTAIN VIEW, CA 94041				
EXAMINER GREIMEL, JOCELYN				
ART UNIT		PAPER NUMBER		
3693				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No. 10/014,919	Applicant(s) BAKER ET AL.
Examiner JOCELYN GREIMEL	Art Unit 3693

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 15 December 2008 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 11-30 and 34-51.
Claim(s) withdrawn from consideration: 31-33.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

/Stefanos Karmis/
Primary Examiner, Art Unit 3693

The amendment to claim 49 is entered because it corrects a typographical error and does not raise new issues.

Regarding claim 11, Applicant argues that Podrazhansky fails to disclose or suggest at least the features of generating or modifying a proposed schedule of tasks. Applicant argue that Podrazhansky does not schedule tasks for a project. The Examiner respectfully disagrees. At the outset, Examiner notes that Podrazhansky states that invention is for various aspects of scheduling and project management (paragraph 0027, 0033 and 0035). Applicant's claim however, fails to limit the tasks, or project to a specific type/category of tasks or project and therefore they are interpreted broadly. Furthermore, the claim only requires that one task be present and therefore only one task need to be scheduled. Given a reasonable interpretation, a task could be identified by Podrazhansky. For example, staffing requirements can be considered a task that needs to be done for a workload project. Podrazhansky teaches scheduling staffing (paragraphs 0032-0035 and 0051). Podrazhansky also teaches Queue staffing that enables the user to control time allotted to an individual performing a given task (paragraph 0055).

Applicant argues that Podrazhansky fails to teach a "load leveler subsystem configured to receive data representative of the tasks for the project, and to generate a proposed schedule of the tasks responsive to fluctuations...". The Examiner respectfully disagrees. As noted above, the scheduling module, which converts workload volumes into the time it takes to complete the task dictated by the workload volume (paragraph 0045 and 0051). While Podrazhansky does not call it a "load leveler", the teachings of Podrazhansky receive data representative of tasks for a project and generate a proposed/future schedule of the task(s).

Further, Podrazhansky teaches the ability to modify a schedule in an effort to minimize costs. Specifically, Podrazhansky teaches a Schedule Costing Module that enables the user to analyze and control the labor cost of the scheduled workload volume (paragraph 0053). The user can apply predetermined rules to workload volume and to use the cost calculation option tool to set thresholds (paragraph 0053). Controlling the costs using thresholds is one to minimize cost. Since the schedule is done with the minimized cost, the modified schedule is based on minimizing/controlling cost.

Arguments regarding the other independent claims are substantially similar as the arguments for claim 11 and thus the other claims are rejected under the same reasoning as claim 11.